

Order

Michigan Supreme Court
Lansing, Michigan

January 21, 2009

Marilyn Kelly,
Chief Justice

132876

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 132876
COA: 264052
Saginaw CC: 03-022840-FH

MATTHEW LLOYD MCGRAW,
Defendant-Appellant.

By order of October 31, 2007, the application for leave to appeal the November 16, 2006 judgment of the Court of Appeals was held in abeyance pending the decision in *People v Sargent* (Docket No. 133474). On order of the Court, the case having been decided on June 18, 2008, 481 Mich 346 (2008), the application is again considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether, absent an express indication to the contrary, the offense variables of the statutory sentencing guidelines, MCL 777.1 et seq., are to be scored based on (a) the defendant's conduct in committing the specific offense for which those guidelines are being scored, (b) the defendant's conduct during the entire criminal transaction, or (c) the defendant's conduct during both the specific offense being scored and any offenses resulting in conviction that arise out of the same transaction and that are enumerated in MCL 791.233b (see MCL 769.31(d)); (2) when is an offense completed for purposes of scoring the offense variables; (3) whether an accomplice to the underlying crime can be considered a "victim" under MCL 777.39 (OV 9); and (4) whether, based on the foregoing, the defendant in this case was properly assessed 10 points for "2 to 9 victims" under MCL 777.39 (OV 9) where he broke into an unoccupied store but, in the course of driving away with two accomplices, led police on a car chase ending in a collision.

We further ORDER the Saginaw Circuit Court, in accordance with Administrative Order 2003-03, to determine no later than February 3, 2009, whether the defendant is indigent and, if so, to appoint the State Appellate Defender Office to represent the defendant in this Court. If the defendant is not indigent, he must retain his own counsel.

The Clerk of the Court is directed to place this case on the May 2009 session calendar for argument and submission. Appellant's brief and appendix must be filed no later than March 23, 2009, and appellee's brief and appendix, if appellee chooses to submit an appendix, must be filed no later than April 17, 2009.

The Prosecuting Attorneys Association of Michigan and the Criminal Defense Attorneys Association are invited to file briefs amicus curiae, to be filed no later than April 28, 2009. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



d0120

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 21, 2009

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk